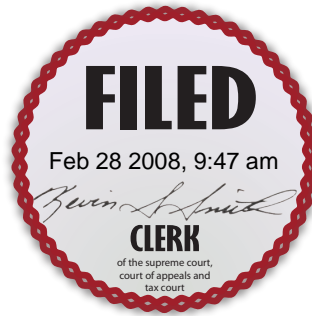


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SARAH PING,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 03A05-0708-CR-460
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No.03C01-0503-CM-521

February 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Sarah Ping appeals following the trial court's decision to revoke her probation and order that she serve the balance of her previously suspended sentence in the Bartholomew County Jail. Ping argues that the trial court abused its discretion in ordering her to execute her previously suspended sentence. Concluding the trial court acted within its discretion, we affirm.

Facts and Procedural History

On June 22, 2004, Ping entered into a Juvenile Court Attendance Agreement following an allegation that her daughter had violated Indiana's compulsory school attendance statute.¹ Ping failed to abide by this agreement, and on March 21, 2005, the State charged Ping with contributing to the delinquency of a minor, a Class A misdemeanor, alleging that Ping "knowingly or intentionally aided, caused, encouraged, or induced a child less than 18 years of age . . . to commit an act of delinquency, violation of Indiana's compulsory school attendance law." Appellant's Appendix at 104. On June 29, 2005, Ping pled guilty pursuant to a plea agreement and the trial court sentenced Ping to one year of probation. As a condition of her probation, Ping was required to "ensure her children are in compliance with the mandatory school attendance laws . . . [,] ensure her children attend school every day unless excused by the school nurse or seen by a doctor on the day of the illness . . . [, and] attend all parent teacher conferences." Id. at 88. She also agreed to the

¹ At the time of the agreement, the applicable statute was Indiana Code section 20-8.1-3-17. Our legislature repealed Indiana Code chapter 20-8.1-3 in 2005, and the provisions relating to compulsory school attendance are now codified in Indiana Code chapter 20-33-2.

standard conditions of probation, including that she report to her probation officer as directed and pay her probation fees.

On January 25, 2006, the State filed a petition to revoke Ping's probation, alleging that Ping failed to report for scheduled probation appointments and had failed to ensure that her children were in compliance with the compulsory school attendance laws. On May 24, 2006, the trial court found that Ping had violated the terms of her probation. On November 14, 2006, the trial court held a dispositional hearing and ordered that Ping serve sixty days of her previously suspended sentence in the Bartholomew County Jail and extended her probation through the end of the 2007-2008 school year.

On February 27, 2007, the State filed a second petition to revoke Ping's probation, alleging that on fifteen separate days, Ping failed to ensure that her daughter was in compliance with the compulsory attendance laws and that Ping "failed to cooperate with the case manager . . . and has missed scheduled appointments on numerous dates and is not following through with the recommendations." Id. at 47. On April 17, 2007, the trial court held an evidentiary hearing and found that Ping had violated the terms of her probation. On June 27, 2007, the trial court held a dispositional hearing and ordered that Ping serve the remaining ten months of her previously suspended sentence. At the hearing, the trial court made the following statement explaining its decision:

I'm not pleased today. I think . . . you really, were quite resistant to [services]. I think they would have helped you deal with the situational stress that you always appear to me to have. You have this demeanor about you of helplessness. As if you can't control this environment or circumstances for your children. That does not excuse you as a parent for not making sure they go to school. It's mandatory school attendance laws. I'm not pleased because

I look back . . . [and] we first tried to work with the family through an informal facilitation with the ATTEND team. That didn't meet with success. We, then . . . dealt with informal probation and then formal charges against the mother. To tell me today, that she doesn't understand or how devastating it would be to go to jail, I know. She wrote me numerous letters at times when she was incarcerated, pleading to please let her out, that she won't let this happen again. . . . But, why would you put yourself in a situation, again, where you have found now a second violation of your probation for the same conduct.

The school records are that [the absences] are unexcused. We have unverified. We have unexcused. We have tardies, since, even since you were found in contempt the last time. . . . We've had numerous discussions about the choices you have to make sure that it is not going to be an unverified absence. I tend to agree with [the State's counsel]. I think the children are not going to be served. I don't know what's going to change next year, but I would suggest that we would have to start it all over again, if attendance becomes an issue.

Transcript at 21-23. Ping now appeals.

Discussion and Decision

A trial court's authority to sentence a defendant following a probation violation is governed by statute.

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

Ind. Code § 35-38-2-3(g). "Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed." Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Therefore, we do not review a trial court's imposition of a previously suspended sentence under the inappropriateness

standard of Indiana Appellate Rule 7(B). Id. Instead, we review a trial court’s sentencing decision following a probation revocation for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. We will find an abuse of discretion “where the decision is clearly against the logic and effect of the facts and circumstances.” Prewitt, 878 N.E.2d at 188. We will consider the evidence most favorable to the trial court’s decision and will not reweigh the evidence or judge witnesses’ credibility. Sanders, 825 N.E.2d at 954-55.

In arguing that the trial court abused its discretion, Ping states that her argument “is one of common sense,” and asks, “Should it be a rule in our society that if one’s child refuses to attend school regularly, that parent gets put in jail? Is this a good use of our judicial resources? Is this a good use of space in our jails when criminals who might inflict actual harm on society are free to walk the streets?” Appellant’s Brief at 4. Our legislature has already answered these questions by criminalizing the failure to ensure that one’s children are in compliance with the mandatory school attendance laws. See Ind. Code §§ 35-46-1-8(a) (indicating that one commits a Class A misdemeanor if he “knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency”²); 20-33-2-27 (“It is unlawful for a parent to fail to ensure that the parent’s child attends school as required under this chapter.”³). To answer Ping’s questions in the negative would be tantamount to judicially overruling statutes passed by our

² “A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 20-33-2 concerning compulsory school attendance.” Ind. Code § 31-37-2-3.

legislature, thereby contravening the separation of powers. We decline to do so.⁴

We conclude the trial court acted within its discretion in ordering Ping to execute the remainder of her sentence. This revocation was Ping's second, and both times the trial court revoked her probation for multiple violations—Ping's consistent failure to ensure that her daughter regularly attended school and to meet with those designated to assist her and comply with their recommendations. Cf. Crump v. State, 740 N.E.2d 564, 573 (Ind. Ct. App. 2000) (holding that trial court did not abuse its discretion in ordering defendant to execute his previously suspended sentence after finding that defendant had violated terms of probation by consuming alcohol), trans. denied; Johnson v. State, 692 N.E.2d 485, 489 (Ind. Ct. App. 1998) (holding trial court did not abuse discretion by ordering execution of previously suspended sentence where trial court had declined to revoke the defendant's probation based on a previous violation).

Conclusion

We conclude the trial court acted within its discretion in ordering Ping to execute the remainder of her previously suspended sentence.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

³ Violation of this section constitutes a Class B misdemeanor. Ind. Code § 20-33-2-44(b).

⁴ Ping also states that had she “just declared her child home schooled, this issue would be moot.” Appellant's Br. at 4. We point out that it is not nearly enough to merely declare one's child to be home-schooled. Instead, a parent must provide his or her child “with instruction equivalent to that given in public

schools.” Ind. Code § 20-33-2-28(b). There is no indication in the record that Ping was providing any sort of education at home.